

PROPOSED COMMITTEE AMENDMENT TO LD 1428
Sponsored by Senator David C. Burns

COMMITTEE AMENDMENT “.” To LD 1428, An Act to protect Religious Freedom

Amend the bill by striking out everything after the enacting clause and inserting in its place the following:

Sec. 1. 5 MRSA c. 337-D is enacted to read:

CHAPTER 337-D
PRESERVATION OF RELIGIOUS FREEDOM

§4801. Short title

This chapter may be known and cited as “The Preservation of Religious Freedom Act.”

§4802. Findings

The Legislature makes the following findings:

1. Federal constitution. The framers of the United States Constitution, recognizing free exercise of religion as a fundamental and unalienable right, secured its protection in the First Amendment to the Constitution;

2. State constitution. The framers of the Constitution of Maine, also recognizing free exercise of religion as a fundamental and unalienable right, secured its protection in the State Constitution of Maine;

3. Exercise of religion burdened. Laws and other state action neutral toward religion may burden exercise of religion as surely as laws intended to interfere with religious exercise;

4. Compelling state interest. State action should not burden exercise of religion without a compelling interest;

5. Effect of 1990 decision. Prior to 1990, laws and other state action burdening exercise of religion had to be justified by a compelling interest. In *Employment Division v. Smith*, 494 U.S. 872 (1990), the Supreme Court significantly curtailed the requirement that laws and other state action burdening the free exercise of religion be justified by a compelling interest;

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6. Reassertion of compelling interest test. The compelling interest test set forth in this Act and in federal court rulings prior to *Employment Division v. Smith*, including *Wisconsin v. Yoder*, 406 U.S. 205 (1972), and *Sherbert v. Verner*, 374 U.S. 398 (1963), is a workable test for striking sensible balances between religious liberty and competing governmental interests; and

7. Role of legislative bodies to protect free exercise of religion. *Gonzales v. O Centro Espirita Beneficente Uniao do Vegetal*, 546 U.S. 418 (2006), indicates that legislative bodies may enact statutory law for their jurisdictions requiring that laws and other state action burdening the free exercise of religion be justified by a compelling governmental interest. Many states have done so, passing laws similar to this Act.

§4803. Purposes

The purposes of this Act are:

1. Application of compelling interest test. To restore the compelling interest test as set forth in *Wisconsin v. Yoder*, 406 U.S. 205 (1972), and *Sherbert v. Verner*, 374 U.S. 398 (1963), and to guarantee its application in all cases in which the exercise of religion is burdened by state action; and

2. Provide claim or defense. To provide a claim or defense to a person or persons whose exercise of religion is burdened by state action.

§4804. Definitions

As used in this Act, unless the context otherwise indicates, the following terms have the following meanings.

1. Burden. “Burden” means any action that directly or indirectly constrains, inhibits, curtails or denies the exercise of religion by any person or compels any action contrary to a person’s free exercise of religion, and includes, but is not limited to, withholding benefits, assessing criminal, civil or administrative penalties or exclusion from governmental programs or access to governmental facilities.

2. Exercise of religion. “Exercise of religion” means the practice or observance of religion. “Exercise of religion” includes, but is not limited to, the ability to act or refuse to act in a manner substantially motivated by one’s sincerely held religious belief, whether or not the exercise is compulsory or central to a larger system of religious belief.

3. Person. “Person” means any individual, association, partnership, corporation, church, religious institution, estate, trust, foundation or other legal entity.

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4. “State action.” “State action” means the implementation or application of any law, whether statutory or otherwise, including, but not limited to, state and local laws, ordinances, rules, regulations, and policies, or other action by the State or any political subdivision of the State and any local government, municipality, instrumentality or public official authorized by law in the State.

§4805. Free exercise of religion protected

1. Burden prohibited; exceptions. State action may not burden a person’s right to the free exercise of religion, even if the burden results from a rule of general applicability, unless the supporter of the state action demonstrates that applying the burden to that person’s exercise of religion in this particular instance:

A. Is essential to further a compelling governmental interest; and

B. Is the least restrictive means of furthering that compelling governmental interest.

2. Claim or defense; relief. If state action burdens a person’s exercise of religion or proposes to burden a person’s exercise of religion; in violation of this Act, the person may assert such violation or proposed violation as a claim or defense in a judicial proceeding, regardless of whether the State or one of its political subdivisions is a party to the proceeding. The person asserting such a claim or defense may obtain appropriate relief, including relief against the State or its political subdivisions. Appropriate relief includes, but is not limited to, injunctive relief, declaratory relief, compensatory damages and costs and attorney fees.

SUMMARY

This amendment replaces the bill. It codifies legislative findings that summarize the enshrinement of the right to the free exercise of religion in the United States Constitution and the Constitution of Maine, and case law of the United States Supreme Court interpreting the fundamental and inalienable right to the free exercise of religion, as well as the extent to which Congress can legislate in this area.

This amendment states clearly that the purposes of this legislation are to restore the compelling interest test as set forth in *Wisconsin v. Yoder*, 406 U.S. 205 (1972), and *Sherbert v. Verner*, 374 U.S. 398 (1963), and to guarantee its application in all cases in which the exercise of religion is burdened by state action, as well as to provide a claim or defense to a person or persons whose exercise of religion is burdened by state action.

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This amendment provides that state action may not directly or indirectly burden a person's free exercise of religion unless the state action is essential to furthering a compelling state interest and is accomplished through the least restrictive means.

This amendment allows the person whose free exercise of religion has been or is likely to be burdened in violation of this legislation to assert the violation or likely violation as a claim or defense in a court action, even if neither the State nor one of its political subdivisions is a party to that action.

This amendment's requirement that governmental action infringing upon the free exercise of religion be justified by a compelling interest is similar to the requirement placed on the federal government through the Religious Freedom Restoration Act of 1993 and that of 18 other states that have passed similar protections.

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